

REMARKS

I. INTRODUCTION

Claims 1-24 are pending in this application. The Applicant gratefully acknowledges the indication of allowable subject matter in claims 4, 6, 7, 12, 14, and 17. By this Amendment, claims 1 and 10 are amended. Claims 25-31 are canceled without prejudice or disclaimer. In view of the foregoing amendments and following remarks, Applicant respectfully submits that claims 1-24 are in condition for allowance. A notice indicating the same is respectfully requested.

II. REJECTIONS UNDER 35 U.S.C. § 102

In numbered paragraph 1 on page 2 of the Office Action dated June 13, 2006, claims 1-3, 10, 11, 15, 29, and 30 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,941,580 to Julian ("Julian"). The rejection is respectfully traversed. Nevertheless, by this Amendment, independent claims 1 and 10 are amended to more particularly recite various features of the flange. Therefore, in view of the foregoing amendments and following remarks, Applicant respectfully submits that at least claims 1-3, 10, 11, and 15 are in condition for allowance.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); *see* M.P.E.P § 2131. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Here, Julian fails to teach each and every element as set forth in the claims.

Claim 1, as amended, recites:

A container neck comprising:
a finish terminating in an opening;
a circumferential upper sidewall connected to said
finish at an end opposite said opening;
a lower sidewall below said upper sidewall; and
a hollow annular flange extending radially
outwardly between said upper and said lower sidewalls, wherein
the flange includes undulations in a top surface thereof, ***at least a
portion of the undulations extending radially outwardly and***

downwardly from said upper sidewall to strengthen the container neck. (emphasis added).

Therefore, claim 1 requires that at least a portion of the undulations in a top surface of the hollow annular flange extend radially outwardly **and downwardly** from said upper sidewall to strengthen the container neck. Recitation of the radially outward and downward extension of the top surface of the flange is believed to be supported in the original disclosure by at least the drawings (*see, e.g.*, FIG. 2) and is believed to effectively recite the tapered profile of the flange as defined by the top and bottom surfaces thereof relative to one another.

Julian, on the other hand, purportedly teaches “a dispensing closure for a container having a lid hinged to a base member with the lid swinging from a closed position covering an opening in the container to an open dispensing position, and, more particularly, to means for effecting the initial opening movement of the lid.” Julian, column 1, lines 4-9; *see* FIGS. 2, 3, and 6. More specifically, Julian discloses that “[i]n the embodiment of FIGS. 1-6, the lid opening cam element 30 is in the form of a depending cam follower which coacts with the undulating or sawtooth cam surface 34 on the container neck. When the base ring 30 [sic] is rotated in a clockwise direction as shown by arrow 36 in FIG. 4, the cam element 30 rides on the cam surface 24 [sic] following the surface upwardly as shown in FIG. 5 to a peak 38 in the sawtooth or undulating cam surface 24 [sic] as shown in FIGS. 2 and 3 thereby lifting the lid 18 upwardly as shown by arrow 44 in FIG. 6 so that it can be pushed into a completely open dispensing position.” Julian, column 5, lines 25-36. As seen most clearly in FIGS. 3-6, undulating cam surface 34 extends radially outwardly at any given circumferential point on neck 12 of bottle 14, and thus forces cam element 30 upwardly during rotation of the base ring 16. Cam surface 34 does not, however, extend “radially outwardly ***and downwardly***” from an upper sidewall to strengthen the container neck, or neck portion, as currently recited in at least claims 1 and 10.

For at least the foregoing reasons, claims 1 and 10 are submitted as being allowable. None of the cited prior art references are believed to remedy the above-noted deficiencies in Julian. Claims 2-9 and 11-24 depend from claims 1 and 10, respectively, and are submitted as being allowable over Julian for at least the same reasons. Reconsideration is respectfully requested.

III. REJECTIONS UNDER 35 U.S.C. § 103

Claims 5, 8, 9, 13, 16, and 18

In numbered paragraph 2 on page 2 of the Office Action, claims 5, 8, 9, 13, 16, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Julian. By this Amendment, independent claims 1 and 10 are amended to more particularly recite the features of the flange. Therefore, in view of the foregoing amendments and following remarks, Applicant respectfully traverses the rejection as failing to establish a *prima facie* case of obviousness and submits that at least claims 5, 8, 9, 13, 16, and 18 are also in condition for allowance.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

For at least the same reasons presented above, the Applicant respectfully submits that Julian fails to teach or disclose all the features recited in at least amended claims 1 and 10. Claims 5, 8, and 9 depend from claim 1 and claims 13, 16, and 18 depend from claim 10. Therefore, claims 5, 8, 9, 13, 16, and 18 are submitted as being allowable over Julian for at least the same reasons set forth above. Furthermore, the Office Action fails to provide any motivation for modifying Julian to meet the recited features. Reconsideration is respectfully requested.

Claims 19-23 and 25-28

In numbered paragraph 3 on pages 2-3 of the Office Action, claims 19-23 and 25-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Julian, as applied to claim 10, further in view of European Patent Document EP 0000823 to Robinson (“Robinson”). The rejection is respectfully traversed. Nevertheless, by this Amendment, claims 25-28 are cancelled, thus rendering the rejection moot as to these claims. Furthermore, by this Amendment, independent claim 10 is amended to more particularly recite the features of the flange. Robinson is not believed to cure the above-noted deficiencies in Julian with respect to claim 10. Therefore, because claims 19-23 depend from claim 10, they are submitted as being allowable over the cited references for at least the same reasons set forth above. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 24

In numbered paragraph 4 on page 3 of the Office Action, claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Julian, as applied to claim 10, further in view of U.S. Patent No. 6,105,800 to Czesak. By this Amendment, independent claim 10 is amended to more particularly recite the features of the flange. Claim 24 depends from claim 10 and is submitted as being allowable over the foregoing references for at least the same reasons set forth above. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

IV. CONCLUSION

Claims 1-24 are pending in the application. The Applicants respectfully submit that claims 1-24 are in condition for allowance and requests issuance of a Notice of Allowability indicating the same. It is not believed that extensions of time or other fees are required beyond those that may otherwise be provided for in documents accompanying this paper. If, however, additional extensions of time are needed to prevent abandonment of this application, such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims or any other fee deficiency), are hereby authorized to be charged, and any overpayments credited to, our Deposit Account No. 22-0261.

If the Examiner believes, for any reason, that a personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



Keith G. Haddaway, Ph.D.

Registration No. 46,180

Ryan M. Flandro

Registration No. 58,094

VENABLE LLP

P.O. Box 34385

Washington, D.C. 20043-9998

Telephone: (202) 344-4000

Telefax: (202) 344-8300

Attorneys/Representatives for Applicants

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